



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/516,753 | 03/01/2000 | Gregory Pinchasik | 2390/49701 | 3706 |

27123 7590 03/15/2005
MORGAN & FINNEGAN, L.L.P.
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

EXAMINER

BUI, VY Q

ART UNIT PAPER NUMBER

3731

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Cm

Office Action Summary

Application No.

09/516,753

Applicant(s)

PINCHASIK ET AL.

Examiner

Vy Q. Bui

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 12-19, 51-66, 106 and 107 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11, 25, 28-33, 35, 95-100, 104-105, 108-111, 113-114, 116-119, 122, 125 is/are rejected.
- 7) ☒ Claim(s) 101 and 102 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/02/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1-6,9-25,28-33,35,51-66,95-102,104-111,113,114,116-119,122 and 125.

Art Unit: 3731

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the Species shown in Fig. 5 as elected in the reply filed on 6/11/2001 has been reconfirmed and is acknowledged.

Claim Objections

Claim 95 is objected to because of the following informalities: two recitation "a second frequency" in the claim (lines 8 and 10). Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

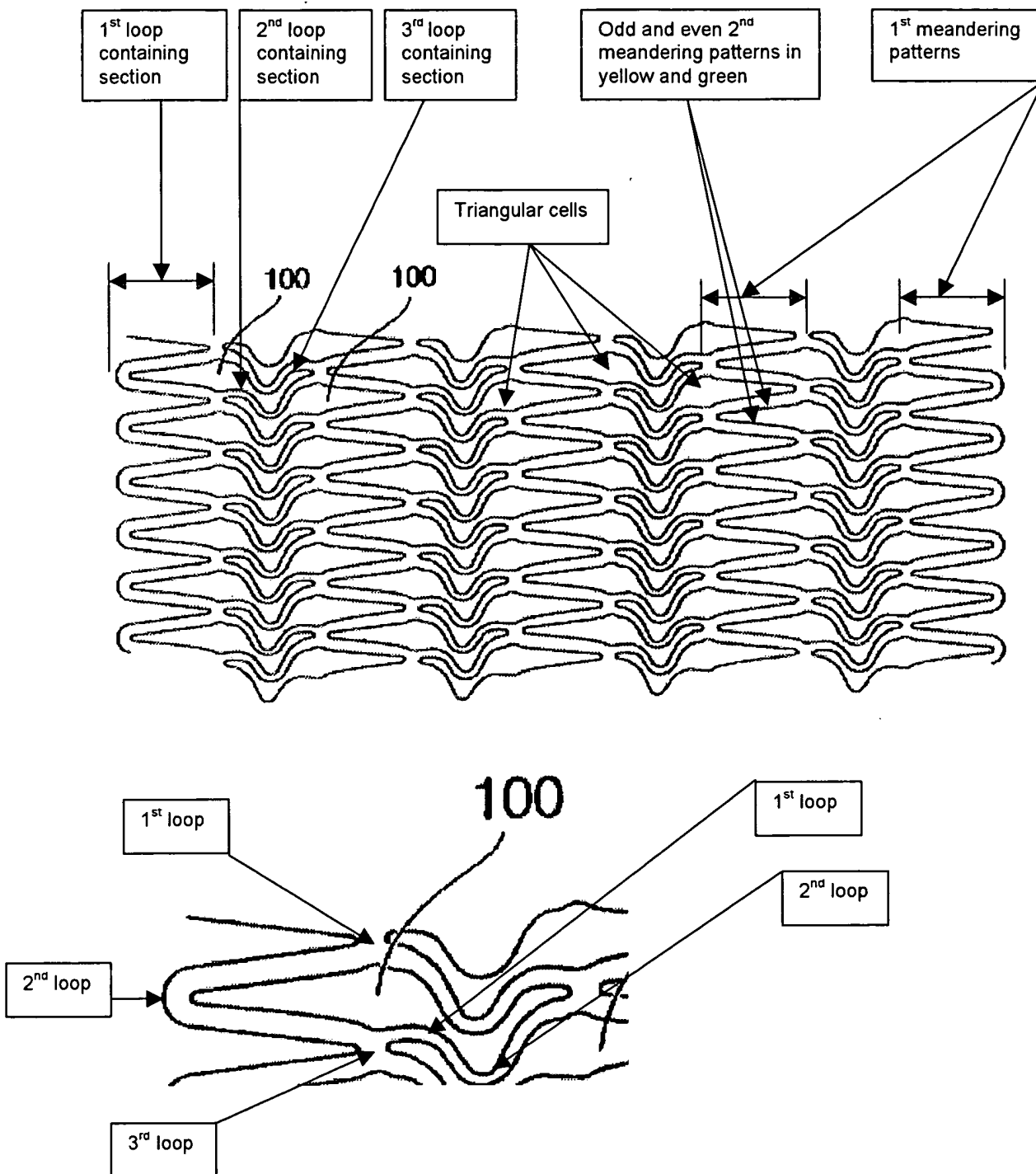
(b) the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-6, 9-11, 21, 23-25, 28-33, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Oepen-WO 98/35634.

Von Oepen-'634 (Fig. 10 as presented on page 3) discloses substantially all limitations as recited in the claims.

Art Unit: 3731



Art Unit: 3731

2. Claims 21-22, 108-109 and 122 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry et al.-6,231,598.

Berry-'598 (Fig. 5, for example) discloses 1st meander patterns or 1st circumferential bands 14/69, 2nd meander patterns or 2nd circumferential bands 21/39, shorter and wider legs in the 1st meander patterns, and even 1st meander pattern and odd 1st meander pattern are out of phase 180 degrees. Notice that the claims do not specify the triangular cells with any specific detail to exclude some cells in Berry-'598.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Oepen-WO 98/35634.

Von Oepen-'634 discloses substantially all structural limitations of the stent except for plating the stent with a radiopaque material/protective material/medicine. It is well known in the art to coat a stent with a radiopaque material/protective material/medicine and it would have been obvious to one of ordinary skill in the art to provide Von Oepen-'634 stent with a radiopaque material/protective material/medicine coating as recited in the claim.

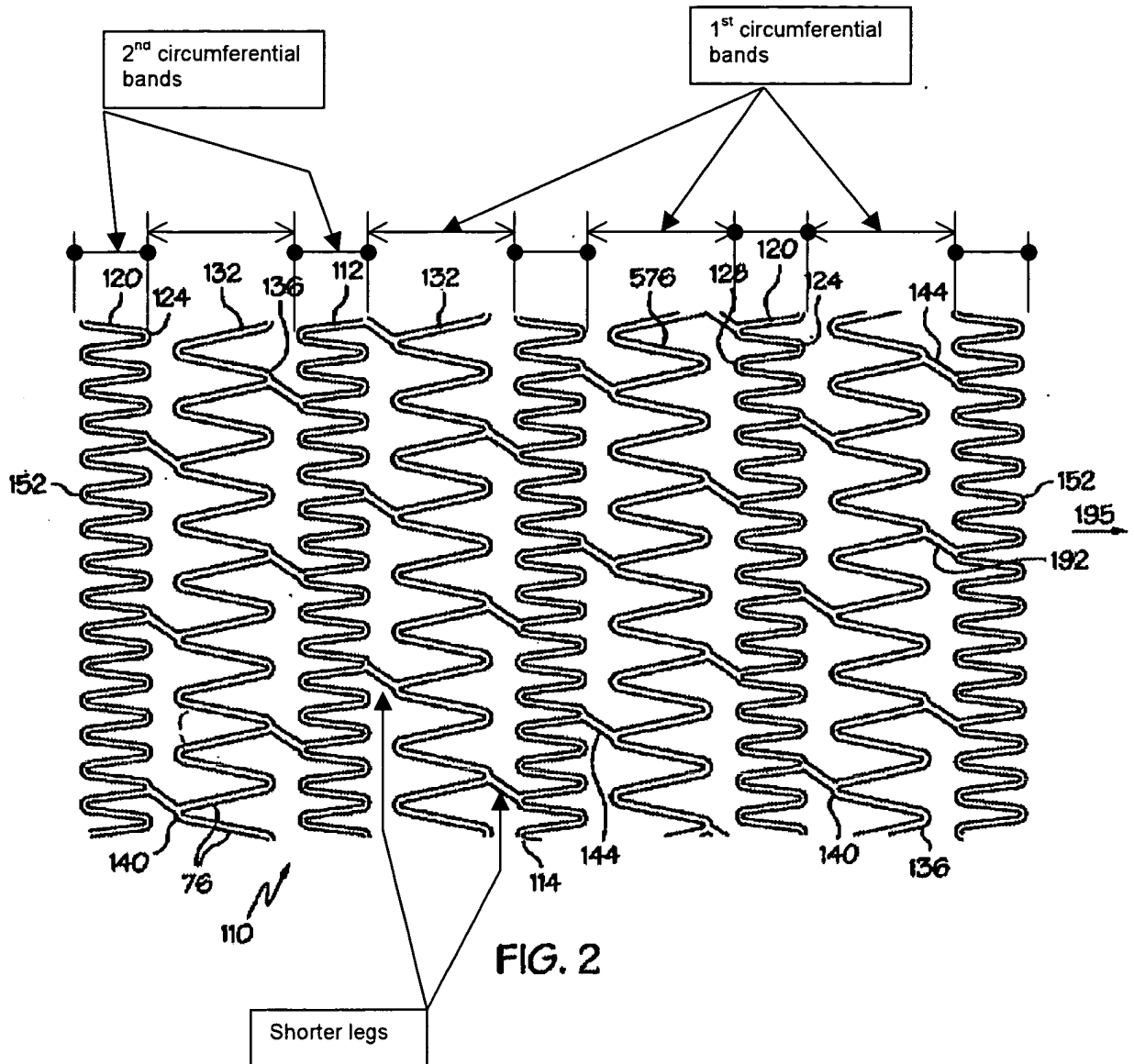
Art Unit: 3731

2. Claims 95-100, 104-105, 108-111, 113-114, 116-119, 122, 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al-6,776,793 in view of Von Oepen-WO 98/35634.

As to claims 95-102, 104-105, 108-111, 113-114, 116-119, 122 and 125, Brown-'793 (Fig. 2, reproduced and shown on next page) discloses substantially all limitations as recited in the claims, except for the 1st loop containing section has wider legs than the 2nd and 3rd loop containing sections.

However, it is well known in the art to have a stent with bands having wider legs alternating with bands having narrow legs to provide flexibility for the stent. For example, Von Oepen (Fig. 10) above shows bands of 1st loop containing section having wider legs and bands of 2nd and 3rd loop containing sections having narrower legs to enhance flexibility of the stent. In view of Von Oepen, it would have been obvious to one of ordinary skill in the art at the time of the invention to make bands of 1st loop containing sections of Brown stent to have legs wider than legs of bands formed of 2nd and 3rd loop containing sections so that Brown stent would be more flexible to adapt itself to a blood vessel. Notice that Brown's Fig. 2 shows 1st circumferential bands having a basically sinusoidal pattern of loops at a 1st frequency and 2nd circumferential bands having a basically sinusoidal pattern of loops at a 2nd frequency higher than the 1st frequency as recited in the claims.

Art Unit: 3731



Art Unit: 3731

Allowable Subject Matter

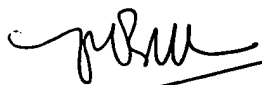
Claims 101-102 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



03/04/2005

Vy Q. Bui
Primary Examiner
Art Unit 3731